

CONTRACTING OUT PROCUREMENT FUNCTIONS: AN ANALYSIS

DAU RESEARCH REPORT 06-001



November 2005

**PUBLISHED BY THE DEFENSE ACQUISITION UNIVERSITY PRESS
Fort Belvoir, Virginia**

Report Documentation Page

Form Approved
OMB No. 0704-0188

Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

1. REPORT DATE NOV 2005	2. REPORT TYPE N/A	3. DATES COVERED -
4. TITLE AND SUBTITLE Contracting Out Procurement Functions: An Analysis		
5a. CONTRACT NUMBER		
5b. GRANT NUMBER		
5c. PROGRAM ELEMENT NUMBER		
6. AUTHOR(S)		
5d. PROJECT NUMBER		
5e. TASK NUMBER		
5f. WORK UNIT NUMBER		
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Defense Acquisition University Press Fort Belvoir, VA		
8. PERFORMING ORGANIZATION REPORT NUMBER		
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)		
10. SPONSOR/MONITOR'S ACRONYM(S)		
11. SPONSOR/MONITOR'S REPORT NUMBER(S)		
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release, distribution unlimited		
13. SUPPLEMENTARY NOTES		
14. ABSTRACT		
15. SUBJECT TERMS		
16. SECURITY CLASSIFICATION OF:		
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified
17. LIMITATION OF ABSTRACT SAR		
18. NUMBER OF PAGES 54		
19a. NAME OF RESPONSIBLE PERSON		

Standard Form 298 (Rev. 8-98)
Prescribed by ANSI Std Z39-18

CONTRACTING OUT PROCUREMENT FUNCTIONS: AN ANALYSIS

DAU RESEARCH REPORT 06-001

**Alan S. Gilbreth
Billy R. Harry
Roland D. Kankey
J. Scott Williams**

November 2005

**DEFENSE ACQUISITION UNIVERSITY
9820 Belvoir Road
Fort Belvoir, Virginia 22060-5565**

ACKNOWLEDGEMENTS

We appreciate the opportunity to pursue research on this important topic. We thank Mr. Charlie Williams, Air Force Deputy Assistant Secretary (Contracting) for his active support and encouragement. We appreciate the support from Dr. Beryl Harman, who served as the Director of Research at Defense Acquisition University (DAU) during this study. The authors also thank Mr. Mike Maglio and Lieutenant Colonel John Tenaglia, USAF, from Mr. Williams' staff. We received great support and insight into contracting out procurement functions from meetings with Mr. David Hall (Air Force Materiel Command (AFMC)); Lieutenant Colonel John Cannaday, USAF (U.S. Central Command (CENTCOM)); Mr. Stephen Rodocker, Mr. Jack Miceli, and Ms. Linda Dodson (Defense Supply Center-Columbus); Ms. Sallee Justis, Mr. Lenny Rogers, and Ms. Eileen Wilck (Defense Supply Center-Richmond); Captain John Qua, USN; Mr. Pete Runfola, and Ms. Kathleen Murphy (Headquarters Defense Logistics Agency (DLA)); Mr. Darrin Armentrout, Ms. Joan Morgan, and Mr. Gary Sparrow (Cherokee Information Systems); and Mr. Barry Wilson, Mr. Brian Walsh, Mr. Chris Webster, and Mr. Steven Ford (CACI). We thank Dr. Douglas Goetz, Ms. Judy Volpe, and Ms. Sue Shirey for their editorial review and comments. Special thanks are given to Mr. Tom Wells, Director of Contracting, Headquarters AFMC, Wright-Patterson Air Force Base, Ohio, for his senior leader review of our research. Lastly, we thank our fellow faculty at the DAU Midwest Region who tolerated our spirited discussions about organization and issues such as "inherently governmental."

TABLE OF CONTENTS

Acknowledgements.....	v
List of Tables	viii
Abstract	ix
1. Introduction	1
2. Background.....	1
3. Policy Review.....	3
4. Previous Analyses.....	9
4.1 AFMC Study.....	9
4.2 Air War College Research Paper	10
4.3 Defense Logistics Agency Study.....	11
5. Methodology	11
6. Findings	13
6.1 Respondents	13
6.2 Organizations Contracting Out Procurement Services	13
6.3 Reasons for not Contracting Out.....	15
6.4 Procurement Services Contracted Out (Present and Projected).....	16
6.5 Reasons for Contracting Out.....	19
6.6 Percent of Procurement Workforce provided by the Contractor	19
6.7 Procurement Functions Considered Inherently Governmental.....	20
6.8 Sources of Guidance	22
6.9 Legal Limits/Concerns.....	22
6.10 Expected Future Involvement	23
6.11 Positive Experience with Contracting Out.....	23
6.12 Negative Experience with Contracting Out	24
6.13 Development of Contracting Officers in the Contracted Out Environment	25
7. Answers to Research Questions	27
7.1 What is Reasonable to Contract Out?	27
7.2 What are Other Federal Agencies Doing?	27
7.3 How Widely are Procurement Functions Contracted Out?.....	28
7.4 If we Contract Out Procurement Functions, How do we Grow Contracting Officers?.....	29
7.5 Are we Violating Some Law if we Contract Out Procurement Functions?.....	29
7.6 Have we Gone too far in Some Areas?	30
7.7 Where do we Cross the Inherently Governmental Line?.....	30

8. Conclusions	31
9. Recommendations	32
10. Suggestions for Follow-on Research.....	34
References.....	35
Appendix A: Typical e-mail Request for Support.....	37
Appendix B: Survey Instrument	39

List of Tables

A Distribution of Respondents Among Major Groupings	13
B Distribution of Respondents by Command	14
C Distribution of Respondents Whose Organizations Were Contracting Out Procurement Functions	15
D What Are The Major Reasons You Are Not Contracting Out Procurement Services?.....	15
E What Procurement Services Are You or Will You Be Contracting Out? Ranked.....	17
F What Procurement Services Are You or Will You Be Contracting Out? In Sequence.....	18
G Why Are Procurement Services Being Contracted Out?.....	19
H What Percent of Your Current Procurement Workforce (1102s) Consists of Contractor Employees?.....	20
I What Procurement Activities Does Your Organization Consider Inherently Governmental?.....	21
J Where Did You Look for Guidance Regarding Policy/Guidelines on Contracting Out Procurement?	22
K Did You Receive Any Legal Limits/Concerns in Your Guidance?	22
L How do You Foresee Your Future Involvement in Contracting Out Procurement Services?	23

ABSTRACT

The overall procurement function is clearly an inherently governmental function. However, it can be argued that some functions within procurement are not inherently governmental. Many have identified that Department of Defense (DoD) personnel levels have dropped and that activity rates for procurement organizations have increased. This has driven a gap between the requirements and the organic capability in many DoD contracting offices.

This dilemma of an overall inherently governmental function, yet a shortfall in personnel to perform the overall function, provides the motivation for this study. Eighteen DoD agencies/commands and six non-DoD agencies responded to a survey to determine the current practice. The study determines that government agencies display considerable variety in their use of contractor support for procurement functions. The government must be very careful when contracting out procurement functions. Government leaders must maintain their ability to thoroughly control their policy and management functions. Contracting out a function must not inappropriately restrict agency management in their ability to develop and consider options. This report does not identify or recommend specific procurement functions that should or should not be contracted out. Less sensitive procurement tasks such as contract closeout and market research seem to be appropriate. More sensitive tasks such as negotiation and reviewing contractor performance would be less likely candidates.

This report recommends the manager retain the ability and the option to assess the local environment and requirements, and to make a proper choice. For management purposes, it is recommended that each contracting activity be limited in the percentage of their workforce that may be contracted out.

1. Introduction

Since 1955 it has been the policy of the Executive Branch to rely on contractors in the private sector to provide the goods and services needed to act on the public's behalf (General Accounting Office (GAO) 1981). It has been noted that federal agencies use military personnel, civilian employees, and contracted services to perform federal work; and that all three methods have been responsive and dependable. One limitation in the Office of Management and Budget (OMB) Circular A-76 (March 29, 1979 version), cited by the GAO (1981), was that governmental functions must be performed by government personnel, either military or civilian. These are now more commonly called inherently governmental functions. Office of Federal Procurement Policy (OFPP) Policy Letter 92-1 indicated that contracting functions listed in their Appendix A should be considered inherently governmental. Other contracting functions listed in their Appendix B were identified as not inherently governmental, but would require close scrutiny if performed by a contractor (OFPP 1992). The OFPP stated that the decision on whether a function was inherently governmental was a matter for agency determination. To facilitate such agency determination, OFPP provided a "totality of circumstances test" that cited six factors to be considered when an agency made that determination (OFPP 1992). Some have questioned whether the Department of Defense (DoD) procurement community should contract out more functions and "get on the contracting out bandwagon" (Cannaday 2004). Mr. Charlie Williams, the Air Force Deputy Assistant Secretary (Contracting) (SAF/AQC) sponsored this study to assess the current status on contracting out procurement functions within DoD and federal agencies. Dr. Beryl Harman, the Director of Research for the Defense Acquisition University (DAU), met with Mr. Williams on May 13, 2004. During the meeting, the following research questions were identified (Harman 2004):

1. What is reasonable to contract out in the procurement arena?
2. What are the other federal agencies doing and what can we learn from them?
3. How widely are procurement functions contracted out?
4. If we contract out procurement functions, how do we grow contracting officers?
5. Are we violating some law if we contract out procurement functions?
6. Have we gone too far in some areas?
7. Where do we cross the inherently governmental line?

2. Background

The concept of contracting out in the defense sector has been around for centuries, at least in general terms. In ancient times entire armies were contracted out. In the Middle Ages Swiss pikemen were commonly employed by governments in Europe. The British employed Hessian soldiers in the American Revolution (Philo 2004). There has been continuing concern with what government employees and officials should or should not do since the nation was formed. The framers of the Constitution pondered over which functions were appropriate for the Federal Government (GAO 1991). In 1808 Congress created a new statute, "Officials Not To Benefit," which prohibited officials from gaining personal profit from government office, and prohibited conflicts of interest. This established an initial wedge between the government agent and the private contractor (DAU 2005). Much has happened in the last 200 years. The government policy of dependence on the commercial sector to the maximum extent for services and supplies has been in place for decades.

This has resulted in contractor support in many areas deemed to be not inherently governmental, even though this support may have been previously provided by DoD personnel. It has been noted that general legislation is silent about the use of contractors; and therefore, agencies may use contractors at their discretion, consistent with OMB guidance (GAO 1991). This discretion can be questioned, e.g., “Federal agencies have used contractor personnel to do work that GAO believes federal employees should do . . .” (GAO 1981). This same report indicated that GAO felt DoD had as many as 400,000 federal employees performing commercial or industrial-type activities that would have been more appropriately performed by contractors.

On the other hand, GAO was concerned that in some cases organizations had too much contractor support. They noted that it appeared that sometimes contractor personnel were so deeply involved with agencies’ basic management that they were influencing agencies’ control of federal programs and policies (GAO 1981). At that time they noted that from 1970 to 1980 the civilian executive branch workforce dropped slightly, while the federal expenditures had increased by 195 percent. The value of service contracts over the period had increased by 28 percent after adjustment for inflation. Their conclusion was that the increase in service contracts was largely due to personnel ceilings coupled with increased demands of new or expanded government programs (GAO 1981). The trends of a decreasing federal procurement workforce and an increasing federal procurement workload continued. Kelman (2004) noted the workforce was reduced significantly during the 1990s. He cited this in combination with an increase in the workload by one-third as contributing to the increased strain on the procurement workforce. Schooner (2005) claimed insufficient government procurement personnel resulted in more pressure to award contracts and less emphasis on contract administration. He cited various approaches agencies use to address this pressure, including using another agency to make the award, and the use of Governmentwide Acquisition Contracts (GWACs). He claimed the dramatic spike in procurement actions post 9/11 have exacerbated the situation. With respect to procurement, Kelman (2004) related that contracting was becoming a core competency of government, with government officials increasingly relying on contractors to help achieve the agency missions. Gosier (2005) relates that federal agencies are increasingly turning to contractors for help with their contracting workload.

The Australian Defence Force (ADF) displayed similar objectives and restraints with contracting out. A 1991 Interdepartmental Committee Report recommended the introduction of commercial support to increase the effectiveness and efficiency of the ADF through the use of competition of non-core activities with Australian and New Zealand industry. Their Commercial Support Program (CSP) cited gains across the full spectrum of support activities, delivered through contracting out of defense activities and through in-house restructuring. While this program was similar to DoD’s A-76 program, and focused on functions, some of their comments relate to this current study. They noted that commercialization and civilianization would allow access to a wider range of skills and more effective retention of skills. Their CSP did not consider every ADF activity. Particularly excluded were activities “quarantined as combat-related or required in-house for corporate governance reasons.” They noted that policies of the government and community attitudes both impacted activities considered to be most appropriately carried out by the public sector. Criteria considered before a function was selected for performance by the commercial sector included:

- the wishes of Ministers and Government
- legal requirements
- responsibility and accountability
- privacy, security, and confidentiality
- conflicts of interest and fraud
- management of evaluation, review, and regulation activities

Relevant objectives and goals from their manual included:

- retain military activities
- retain governmental functions
- maintain viable skill/career paths for military and ADF civilian personnel

They noted that some military personnel may need to be employed to maintain desired military personnel numbers and skills. They also noted that certain positions/activities might need to be performed by civilian public servants for viability of activities necessary for a high level of corporate governance. In other words, they recognized the need to maintain viable career structures, and to develop and retain workforce skills (Commercial Support Program Manual (CSPM) 2005).

3. Policy Review

While this research effort was not designed to determine whether the “procurement function” should be contracted out under the authority of OMB Circular A-76, an understanding of the definition of inherently governmental functions contained in the circular is critical to the research.

Inherently governmental functions are defined as those that are so intimately related to the public interest that they must be administered by government employees (OFPP 1992; GAO 1991; OMB 2003). They include the exercise of government discretion and the use of value judgments. The OFPP indicated that “inherently governmental functions necessarily involve the exercise of substantial discretion,” which “must have the effect of committing the Federal Government to a course of action when two or more alternative courses of action exist.” An example was the award of a contract to one firm rather than another (OFPP 1992).

The Federal Acquisition Regulation (FAR) 2.101 provides a description of an inherently governmental function as follows:

Inherently governmental function means, as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing, i.e., the discretionary exercise of Government authority, and monetary transactions and entitlements.

(1) An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to—

- (i) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
- (ii) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
- (iii) Significantly affect the life, liberty, or property of private persons;
- (iv) Commission, appoint, direct, or control officers or employees of the United States; or
- (v) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of federal funds.

(2) Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services. The list of commercial activities included in the attachment to OMB Circular No. A-76 is an authoritative, nonexclusive list of functions that are not inherently governmental functions. (FAR 2005)

Appendix A of OFPP Policy Letter 92-1 provided a list of functions that they felt to be inherently governmental with respect to prime contracts. These are now included in FAR 7.503(c)(12), as summarized below:

- i. Determining what supplies or services are to be acquired by the government;
- ii. Participating as a voting member on any source selection boards;
- iii. Approving of any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;
- iv. Awarding contracts;
- v. Administering contracts ...;
- vi. Terminating contracts;

- vii. Determining whether contract costs are reasonable, allocable, and allowable;
- viii. Participating as a voting member on performance evaluation boards.

The GAO (1992) cited an April 1990 Environmental Protection Agency (EPA) policy memorandum, in which the EPA Administrator noted some actions by contractors were clearly prohibited. These were not specifically cited as inherently governmental functions, but rather functions that the agency felt should be performed by government personnel. Areas considered prohibited for contracting out were determining agency policy and preparing congressional testimony. Questionable areas included support services (such as analyses and feasibility studies) in developing agency policy; specialized expertise in developing statements of work, work assignments, and other contract-ordered tasks; and any situation where a contractor had access to confidential or sensitive information. The caution was that in questionable areas, the agency officials must play an active role to ensure that the government made the final decision. The GAO went on to cite an October 1990 EPA directive that cited a number of activities EPA would not allow to be administered by contractors. The list included:

- determining agency policy
- preparing congressional testimony
- preparing documents on agency letterhead other than routine correspondence
- preparing responses to congressional correspondence
- conducting administrative hearings

With respect to acquisition, Rogers (2000) related that inherently governmental functions are those that exert ultimate control over the acquisition and disbursement of government funds. Rogers indicated these would typically include functions such as: determining agency policy, determining acquisition requirements, awarding contracts, obligating funds, and accepting tender of goods or services. Rogers argued that each of the above necessarily required the exercise of discretion in the application of governmental authority.

OFPP not only provided an Appendix A with a list of functions they considered inherently governmental, they also provided an Appendix B with a list of functions they considered *not* inherently governmental, but close enough to require close scrutiny (OFPP 1992). This same list was included in FAR 7.503(d) (FAR 2005). A few of those items, summarized, that relate to contracting are:

- (7) Providing assistance in contract management.
- (8) Providing technical evaluation of contract proposals.
- (9) Providing assistance in the development of statements of work.
- (11) Working where they might gain access to confidential business information or other sensitive information.

- (14) Participating as technical advisors to a source selection board or participating as voting or non-voting members of a source selection board.

Another wrinkle in the fabric of whether government personnel or contractors should perform specific functions dealt with breadth of vision. The GAO indicated that government decision-making power means more than just being the final authority or signing the document. Government officials should be active throughout the decision-making process. They related that the question often in front of courts was not whether contractors can be involved, but rather the extent to which they can be involved. The government agency should independently perform its review, analytical, and judgmental functions, and participate actively and significantly in the preparation and drafting process. Per the GAO, a key criterion was whether the government maintains sufficient in-house capability to be thoroughly in control of the policy and management functions (GAO 1991).

Guidance on inherently governmental functions was reiterated in OMB Circular A-76 when it was revised in 2003, officially superseding OFPP 92-1. The description remains consistent, continuing to stress activities “intimately related to the public interest” requiring either “substantial discretion in applying government authority” or “making decisions for the government.” While OFPP 92-1 provided a detailed discussion of “inherently governmental,” current guidance in OMB Circular A-76 is more limited. Only four items are listed in the OMB Circular (Attachment A, B.1.a). The three that relate to contracting are summarized below.

- (1) Binding the United States to take or not to take some action by contract, ...
- (2) Determining, protecting, and advancing economic, political, territorial, property, or other interests by ... contract management ...
- (4) Exerting ultimate control over the acquisition, use, or disposition of United States property ...

The circular goes on to tighten the description of substantial discretion. It stresses that not every exercise of discretion is substantial. Non-substantial discretion has two attributes. First it is limited or guided, i.e., ranges for acceptable decisions or conduct are specified by existing policies, procedures, directions, orders, or other guidance. Second, it is subject to final approval or regular oversight by agency officials (OMB 2003). FAR 3.104-1 defines “substantial participation” of an official to mean that the official’s involvement was “of significance to the matter.” Substantial participation is “more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.” The FAR does not discuss the meaning of substantial discretion (FAR 2005).

On the one hand, OMB maintains that unless statutory restrictions apply, inherently governmental activities are those where substantial discretion is required to make a relatively unconstrained choice between at least two alternative courses of action. But, on the other hand, OMB guidance in their Appendix A goes on to stipulate that activities may be deemed inherently governmental if contracting out the activity would inappropriately restrict agency management in their ability to develop and consider options (OMB 2003).

Current federal policy in FAR 7.503(e) is:

Agency implementation shall include procedures requiring the agency head or designated requirements official to provide the contracting officer, concurrent with transmittal of the statement of work (or any modification thereof), a written determination that none of the functions to be performed are inherently governmental. This assessment should place emphasis on the degree to which conditions and facts restrict the discretionary authority, decision-making responsibility, or accountability of Government officials using contractor services or work products. Disagreements regarding the determination will be resolved in accordance with agency procedures before issuance of a solicitation. (FAR 2005)

Note that the FAR policy stresses discretionary authority, decision-making responsibility, and accountability. Not mentioned is the idea of “inappropriate restriction” of the agency management’s ability to develop and consider options. The DoD has chosen to supplement this in the Defense Federal Acquisition Regulation Supplement (DFARS) with some additional guidance with respect to those functions closely associated with inherently governmental functions (DFARS 2005). Per DFARS 207.503 (added March 23, 2005):

(1) In accordance with 10 U.S.C. (United States Code) 2383, the head of an agency may enter into a contract for performance of the acquisition functions closely associated with inherently governmental functions that are listed at FAR 7.503(d) only if:

(i) The contracting officer determines that appropriate military or civilian DoD personnel:

(A) Cannot reasonably be made available to perform the functions;
(B) Will supervise contractor performance of the contract; and
(C) Will perform all inherently governmental functions associated with the functions to be performed under the contract; and

(ii) The contracting officer ensures that the agency addresses any potential organizational conflict of interest of the contractor in the performance of the functions under the contract. (DFARS 2005)

Although OMB guidance allows an inherently governmental decision when decision-making ability starts to be degraded, the FAR and DFARS appear to focus on the function itself versus focus on the decision criterion.

If a function is determined to be inherently governmental (e.g., the procurement function), but some parts (tasks) of the work are non-inherently governmental, then these tasks could be contracted out as Advisory and Assistance Services (AAS) in accordance with FAR 37.2 and DFARS 237.2. The definition of AAS is found in FAR 2.101(b), which states in part:

Advisory and assistance services means those services provided under contract by nongovernmental sources to support or improve: organizational policy development; decision-making; management and administration; program and/or project management and administration; or research and development activities. It can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of federal management processes or procedures (including those of an engineering and technical nature). In rendering the foregoing services, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training and the day-to-day aid of support personnel needed for the successful performance of ongoing federal operations. All advisory and assistance services are classified in one of the following definitional subdivisions:

- (1) Management and professional support services ...
- (2) Studies, analyses and evaluations ...
- (3) Engineering and technical services ... (FAR 2005)

While FAR 37.203(a) recognizes that AAS is a “legitimate way to improve Government services and operations” and FAR 37.203(b) allows for the acquisition of AAS to “support and improve the operation of organizations” among other purposes, FAR 37.203(c) cautions that:

Advisory and assistance services shall not be—

- (1) Used in performing work of a policy, decision-making, or managerial nature, that is the direct responsibility of agency officials;
- (2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;
- (3) Contracted for on a preferential basis to former government employees;
- (4) Used under any circumstances specifically to aid in influencing or enacting legislation; or
- (5) Used to obtain professional or technical advice that is readily available within the agency or another federal agency.

A contracting officer who awards an AAS contract for any government function, not just contracting, needs to be aware of the rules/regulations regarding personal services contracts. FAR 37.104 (b) states “agencies shall not award personal services contracts unless specifically authorized by statute (e.g., 5 U.S.C. 3109) to do so.” FAR 2.101 (b) provides a definition of personal services contracts as follows: “Personal services contract means a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, government employees.” (FAR 2005)

As a result of this policy review, it is clear that the procurement function in its entirety is an inherently governmental function, not subject to OMB Circular A-76, but some of the tasks within the procurement function are not inherently governmental and are subject to contracting out under the purview of advisory and assistance services. This research effort is clearly focused on the use of advisory and assistance services throughout the government to obtain contractor support to perform non-inherently governmental tasks within the procurement function.

4. Previous Analyses

Previous analyses that we received were performed by the Air Force Materiel Command (AFMC), by Air Force Lieutenant Colonel John Cannaday as a project at Air War College, and by the Defense Logistics Agency (DLA).

4.1 AFMC Study

Headquarters AFMC, Directorate of Contracting tried to identify the contracting functions with potential for outsourcing in 1996 and 1997, with a final report in March 1997. They received responses from contracting offices at 17 AFMC organizations. Their caution was that the results were simply a listing of possible functions categorized by level of required controls and approvals. The AFMC study categorized contracting activities into General Administrative, Contracting Support (Administrative), Contracting Support (Advisory and Assistance Services (AAS)), Contracting Functions, and Inherently Governmental (AFMC 1997). They then sorted contracting functions into these five categories.

- a. The General Administrative category included discrete tasks that did not require contracting knowledge or contracting series personnel, and their conclusion was that these could be outsourced. Tasks that included contractor sensitive information were not included in this category.
- b. The Contracting Support (Administrative) category included tasks that could be outsourced, but with controls to ensure protection of proprietary, source selection, employee sensitive, and For Official Use Only (FOUO) information. Generally these were discrete tasks requiring some contracting knowledge.
- c. Contracting Support (AAS) included tasks that were less discrete, which required contracting knowledge, but did not necessarily have to be performed by contracting series personnel. These functions could potentially be outsourced with controls and special approvals. The controls would be required for protection of proprietary, source selection, and FOUO information. Functions listed included conducting basic market research; data collection, measurement, analysis, and reporting (metrics); alternate dispute resolution arbitration/mediation of claims and protests; and contracting functional training.
- d. Questionable functions for outsourcing were those that required substantial exercise of discretion or judgment. They were interrelated duties/responsibilities performed by contracting series personnel, requiring substantial contracting knowledge and experience. The study indicated that detailed analysis by function would be required to determine if the function could be contracted out. These functions included such items as acquisition strategy advice, purchasing agent functions, drafting contract documents/correspondence, evaluating contractor proposals, recommending competitive ranges or negotiation positions, and post-award contract management.
- e. Inherently governmental functions were those that must be performed by government personnel. They include discretionary exercise of government authority and making value judgments in government decisions. Functions listed included determining acquisition strategies, determining

what supplies/services to acquire, participating as a member of a source selection board, making the source selection decision, cost/price analysis, contract negotiation, establishing/interpreting policy, supervising federal employees, drafting/responding to congressional inquiries and audit reports, and other actions that require contracting officer authority.

The AFMC study conclusions were that while laws and regulations allow wide latitude to outsource, controls and approvals would be required if other than general administrative tasks were outsourced. They concluded that administrative support for contracting could be outsourced with some controls, and that AAS support had potential for outsourcing with controls and special approvals, but recommended doing so only on a case-by-case basis. They did not recommend outsourcing what they considered contracting functions (AFMC 1997).

4.2 Air War College Research Paper

Lieutenant Colonel Cannaday completed a research report titled “Contracted Procurement Services: Is It Time for Contracting to Get on the Bandwagon?” in April 2004 at the Air War College, Air University. Lieutenant Colonel Cannaday postulated that throughout the 1990s and continuing into the 21st Century, the Federal Government has expanded dollars spent and number of contractor personnel performing services on its behalf, essentially replacing government employees with contract labor. One specialty that has remained relatively untouched is the functional area of contracting itself. He challenged the conventional wisdom that held the contracting vocation sacrosanct from the government’s procurement list of professional services. His paper provides rationale for a future strategy related to Contracted Procurement Services (CPS) and proposes that the Air Force should define limits, on a corporate level, for use of contractors in procurement. He also addressed the risk associated with the use of CPS with lessons drawn from organizations currently using CPS.

Lieutenant Colonel Cannaday recommended the Air Force should take heed of the experiences and “lessons learned” from other organizations that have transitioned to contractor operations to avoid mistakes and to look at other alternatives. Expanding CPS risks several disadvantages that could call into question the integrity of the acquisition process. Saying that, he felt a deliberate strategy for contractor usage that would stand up to Service, Office of the Secretary of Defense (OSD), or congressional scrutiny would allow senior leadership to incorporate contractors where it made sense within the transformational context of future initiatives.

In the context of Air Force contracting organizations striking a healthy balance for public/private sector performance, Lieutenant Colonel Cannaday had several recommendations in relation to CPS use in the Air Force. First, more thoroughly uncover the potential for using contractors on a cyclical basis to process purchase orders and delivery orders in the last quarter of each year. Second, DAU provide training on the determination of activities performed by government personnel as inherently governmental or commercial in earlier stages of contracting training. Third, the Air Force should ensure that its CPS contracts do not contradict what it declares as “exempt from competition” or “inherently governmental” on the DoD inventory. Fourth, the Air Force should establish policy that addresses the use of CPS and the conditions under which procurement services may be used,

considering what bearing the language in the Air Force Federal Acquisition Regulation Supplement (AFFARS) 7.5 “Inherently Governmental Functions” has on this policy. Fifth, the appropriate staff office should assess the root cause of CPS use thus far in the Air Force.

Lieutenant Colonel Cannaday’s final recommendation stems from an investigation the Army did on the Australian acquisition system. Per the United States Army Materiel Command (AMC) “Contracting XXI Blueprint” (AMC 1998), the Australian Government outsourced its contracting functions with the unintended consequence of stripping the government of the necessary capability to oversee the progress and quality of its contracted supplies and services. Ultimately, it was forced to reverse course and reinstall a federal workforce capability. Lieutenant Colonel Cannaday recommended that the Air Force and DoD should determine an acceptable threshold of CPS based on sound criteria and analysis of lessons learned from other outsourcing of federal activities.

4.3 Defense Logistics Agency Study

The Defense Logistics Agency (DLA) completed a study “J-3312 Staffing Model and Workload Assessment Update” early in Fiscal Year (FY) 2005. They shared their presentation charts dated February 15, 2005, with this research team. Their study evaluated the numbers of government and contractor Full Time Equivalents (FTEs) at Defense Supply Centers in Columbus, Ohio; Philadelphia, Pennsylvania; and Richmond, Virginia. Most procurement contractor support FTE personnel (FY04) were classified as Post-Award (54 percent) or Pre-Award (29 percent). Philadelphia did have a significant number of FTEs classified as Procurement Technician (15 percent of the total). The study addressed workload changes for FY05/06, and plans to address workload transfer. It is interesting that their study concluded that contractor FTEs cost more than government FTEs. Their analysis also indicated that DLA had too many contractor FTEs and not enough government FTEs.

5. Methodology

The meeting with Mr. Charlie Williams [Air Force Deputy Assistant Secretary (Contracting)] by Dr. Beryl Harman [DAU Director of Research] solidified this research topic and provided some clear leads. Telephone calls and discussions with Colonel David Filippi, USAF [Deputy Director of Contracting, Headquarters AFMC] led to the identification of Mr. David Hall as the AFMC expert. A research team meeting with Mr. Hall provided recent results from AFMC studies and a list of AFMC organizational representatives. Mr. Hall also referenced the paper by Lieutenant Colonel Cannaday, “Contracted Procurement Services: Is It Time for Contracting to Get on the Bandwagon?” (Cannaday 2004). An interview with Lieutenant Colonel Cannaday provided further understanding of the subject and research to date. All indications were that Defense Supply Center-Columbus and Defense Supply Center-Richmond were among the leaders in DoD for the use of contractors for procurement support. Telephone calls, followed by personal interviews were held with procurement personnel from both Defense Supply Center regions, and with Headquarters DLA. Informative interviews were also held with personnel from Cherokee Information Services and CACI. Cherokee Information Services was providing significant support to Defense Supply Center-Richmond during their Business Systems Modernization. CACI International, Business

Management Division was providing support in the areas of program management, acquisition planning, contract management services, and acquisition automation to federal organizations such as Defense Advanced Research Projects Agency, Missile Defense Agency, Defense Contracting Command-Washington, and Pentagon Renovation.

Following these interviews, a survey was developed in concert with personnel from the Office of the Air Force Deputy Assistant Secretary (Contracting). The survey instrument was developed as a Microsoft Word form (Appendix B of this report). The survey carefully defined contracted procurement services as “the use of private sector contractors to carry out actions associated with obtaining supplies or services (including construction), from initial description through solicitation and contract award and all phases of contract administration for the U.S. Government—i.e., hiring contractors to do contracting.” The survey specifically applied to duties typically “performed by the 1102 job series/and equivalent military occupational codes.” The survey was not concerned with support roles such as administrative or statistical support.

Mr. Williams then contacted his peers from other Services, soliciting them to identify people who could provide meaningful responses to the survey. The following is the text from a typical message:

Addressee:

I've asked DAU to research the issue of Contracting Out Procurement. I believe we need to understand: what functions in the contracting arena are suitable for contracting out; what other agencies are doing; how contracting out procurement affects development of our contracting officers; where do we draw the line with respect to inherently governmental functions; and whether or not we've gone too far already. DAU will distribute questionnaires to gather information about the extent of contracting out procurement in our buying offices. They will identify arrangements that have worked well and not so well. The questionnaire will also ask respondents to identify the major reasons why they are or are not contracting out procurement services. We need to help DAU by identifying appropriate people to participate in their survey. I am asking you for your help by identifying a person on your staff that would be willing to assist DAU in targeting persons within your acquisition organizations that could provide meaningful responses to the questionnaire. Please identify your focal point to my action officer ...

The research team used personal contacts, the Internet, published directories, and other sources to contact other DoD and federal agencies, and solicited them to likewise identify knowledgeable focal points who could provide meaningful responses. This can be called “purposeful or snowball” sampling (McMillan 1989; Trochim 2001). Some agencies were very responsive, some responded following persistent contacts, and some were not responsive.

Once the focal point had been identified, a two-stage process was utilized. The first contact tried to assure that the representative was knowledgeable and willing to participate in the research. It is very important to note that those who received the survey had already been identified as knowledgeable

about contracting activity *in their organization*. Multiple responses from the same organization were not desired. The intent was for each survey to address the status in a separate organization. In some cases one representative responded for multiple organizations (see Table B, Department of State). Following a positive first contact, the survey was forwarded as an e-mail attachment. While the purpose was to get equal representation and responses from each military service, the interest from the Air Force and Navy is reflected in the responses received when compared to the lower Army response. Emphasis was not placed on any one particular Service or agency as the intent was to represent the extent of participation in contracting out of procurement functions. The number of surveys received reflected the responsiveness of the Services and agencies contacted. Once completed, the form was returned to the research team where it was sorted into an appropriate grouping for the organization (Service, DoD agency, etc.). Discrete responses were tabulated, and comments were grouped by question. The results were analyzed by the research team, and the final report was produced.

6. Findings

6.1 Respondents

The survey phase started in December 2004 and was terminated on May 5, 2005. As of that date 57 completed surveys had been received from the agencies in Table A.

Table A Distribution of Respondents Among Major Groupings		
Agency	Responses	Percentage
Air Force	23	40
Army	4	7
Navy	16	28
Other DoD Agencies	8	14
Non-DoD Federal Agencies	6	11

The agency with the most responses was the Air Force. The next level of indenture is shown in Table B and illustrates the variety of DoD and government organizations participating.

6.2 Organizations Contracting Out Procurement Services

Of the 57 respondents, 26 indicated that their organizations were contracting for procurement services, 25 said their organizations were not contracting for procurement services, 5 said not currently—but they had plans to do so in the future, while one indicated not currently—but they had in the past. The distribution of those respondents who said they were contracting out procurement services is shown in Table C.

Table B
Distribution of Respondents by Command

Air Force	
Air Force Materiel Command	9
Space Command	7
Air Combat Command	5
Air Education and Training Command	2
Army	
Tank-automotive and Armaments Command	2
Headquarters, Department of the Army	1
Wiesbaden Contracting Center	1
Navy	
Naval Air Systems Command	2
Naval Sea Systems Command	3
Naval Facilities Engineering Command	3
Naval Supply System Command	2
Marine Corps	6
Other DoD	
Defense Logistics Agency	3
HQ Defense Contract Management Agency	1
National Reconnaissance Office	1
Missile Defense Agency	1
U.S. Southern Command	1
Washington Headquarters Services	1
Other Federal	
Department of State	1
Department of Transportation	1
Defense Threat Reduction Agency	1
Environmental Protection Agency	1
National Aeronautics and Space Administration	1
Department of Veterans Affairs	1

Table C
Distribution of Respondents Whose Organizations Were Contracting Out Procurement Functions

Agency	Responses	Percentage
Air Force	12 of 23	52
Army	1 of 4	25
Navy	1 of 16	6
DoD Agencies	8 of 8	100
Other Federal Agencies	4 of 6	67

Based on our process and our sampling procedure, it would be unfair to impute these percentages across all these agencies, but it is interesting to note that the dominant Navy response was “we have not done, nor do we plan to do any contracting out of procurement functions,” and the Army responses send a similar message. It is also interesting that other DoD agencies and other federal respondents indicated they were contracting out at a higher rate than the military departments.

6.3 Reasons for not Contracting Out

For those who indicated their organization was not and had no plans to contract out any procurement functions, it was important to know why. Some options that had been identified through the literature search and interviews were provided. There were 26 respondents for this question. The results are in Table D.

Table D
What Are The Major Reasons You Are Not Contracting Out Procurement Services? (n=26)
(Multiple Responses Allowed)

Contracting is an inherently governmental function	15
Current manpower resources are sufficient and qualified	13
Concern with handling proprietary information	8
Could negatively impact competition	7
It is not cost efficient	4
Unsatisfactory contractor performance	2
Other	6

It is interesting to note that while the highest response was “contracting is an inherently governmental function,” running a close second was “current manpower resources are sufficient and qualified.” In fact, several respondents stated that they would contract out some contracting functions if government resources became inadequate. The reservation some units have with contracting out procurement services seems to weaken when faced with the task of performing procurement services in under-staffed conditions. Comments on this question were varied. One indicated that any organization that contracts out loses control of itself and its future. The wisdom

of contracting out was questioned, along with the legality. Another specified that when contracting by negotiation (FAR 15), the procurement function becomes inherently governmental due to the managerial and business decisions that must be made. Others indicated that purely administrative functions could be contracted out, and that contracting out might be acceptable in a surge situation. Another related that contracting out procurement functions puts additional responsibilities on the contracting officer. Along with the usual responsibilities, the contracting officer would need to ensure that decisions supported by the work of a contractor were free from conflicts of interest. One was concerned with the need to maintain a pipeline of well trained and qualified 1102s to assure a viable cadre for movement to contracting officer positions in the future.

6.4 Procurement Services Contracted Out (Present and Projected)

The next question on the survey (Table E) attempted to ascertain which procurement functions were most commonly being contracted out. Thirty-one individuals indicated their organization either was contracting out procurement functions, or planned to do so in the future. Over 75 percent of the respondents indicated their organization had contracted out some contract closeout activities. Over 55 percent cited performance of price and cost analysis, and over 50 percent cited support in developing a statement of work. The nine responses coded “other” involved three responses dealing with the administration of construction contracts; one involved contracting training, and the others were clarifications or qualifications of the listed responses. It is important to see where contractor support occurs in the general flow of the contracting process; Table F provides the responses in an approximate timeline.

Table E
What Procurement Services Are You or Will You Be Contracting Out?
Ranked (n=31)
(Multiple Responses Allowed)

Preparing contracts for closeout	24
Performing price and cost analysis	18
Providing assistance in developing a statement of work	17
Market research	15
Drafting/developing price negotiation memorandum	15
Receiving/assessing offers and preparing packages for negotiation	14
Procurement planning	14
Recommending a procurement strategy (contract type)	14
Drafting solicitation document	14
Issuing solicitation package	12
Processing award decision and distributing contract	11
Reviewing performance and advising the exercise of options	10
Investigating reports of discrepancy	10
Identifying orders for expedited delivery	8
Negotiating contract modifications	8
Negotiating price, terms, and conditions	4
Other	9

Table F
What Procurement Services Are You or Will You Be Contracting Out?
In Sequence (n = 31)
(Multiple Responses Allowed)

Procurement planning	14
Market research	15
Providing assistance in developing a statement of work	17
Recommending a procurement strategy (contract type)	14
Drafting solicitation document	14
Issuing solicitation package	12
Receiving/assessing offers and preparing packages for negotiation	14
Performing price and cost analysis	18
Drafting/developing price negotiation memorandum	15
Negotiating price, terms, and conditions	4
Processing award decision and distributing contract	11
Reviewing performance and advising the exercise of options	10
Investigating reports of discrepancy	10
Identifying orders for expedited delivery	8
Negotiating contract modifications	8
Preparing contracts for closeout	24
Other	9

The data show that contractors perform duties across the spectrum of contracting functions, both pre-award and post-award. It should be noted that contract closeout is the function most heavily performed by contractors. Traditionally, this is a function that offices seek to contract out due to backlogs and attention placed on other higher priority contracting functions. In contrast, very few are using contractor support in negotiating price, terms, and conditions. Negotiation is a function viewed by most as inherently governmental in nature. Respondents' comments lead to the conclusion that in those organizations where contractors perform some tasks related to the negotiation function, government contracting officers perform the inherently governmental tasks. One acquisition organization attached a copy of 25 Contracting Services Support tasks: 12 were to "assist" the contracting office, four were to "draft" documents for the contracting officer, and two were to "coordinate" with organizations outside contracting. Items the contractor performed that did not flow to the contracting officer, or require interaction with outside personnel included:

- enter, review, and update contractual documentation into the contract writing system
- access, populate, and analyze information in databases
- develop and maintain specialized databases

The responses and comments reflect that contractors are tasked to perform functions across the contracting spectrum.

6.5 Reasons for Contracting Out

The spectrum of possible answers was developed based on interviews with Headquarters AFMC, Headquarters DLA, Defense Supply Center-Columbus and Defense Supply Center-Richmond, and the literature review. Results are shown in Table G.

Table G Why Are Procurement Services Being Contracted Out? (n = 31) (Multiple Responses Allowed)	
To meet workload surge requirements	19
Inability to hire adequate resources to meet workload	18
Contracting out is faster than hiring to meet workload	11
Ability to select specific expertise required	11
Bridge to hiring permanent employees	7
More cost effective	4
Other	6

The dominant reasons for contracting out are centered on the organization's workload. Two situations apparently drive the decision to contract out portions of the contracting function; a temporary workload surge or a permanent increase in workload where contractor employees are needed to fill the gap until permanent government employees can be hired. The respondents indicate that contracting out is both faster than hiring government employees and that contractors offer the added ability of being able to provide the specific expertise required. The literature and interviews with government managers point out the increased flexibility contractors provide versus government personnel systems. The speed in hiring enjoyed by the contractor, and the ability of the contractor to provide specific expertise were noted by government procurement managers.

6.6 Percent of Procurement Workforce Provided by the Contractor

The proportion of the workforce provided by the contractor was also of interest for this research; the percentages from the respondent organizations are shown in Table H.

Table H
**What Percent of Your Current Procurement Workforce (1102 or Equivalent)
 Consists of Contractor Employees? (n = 31)**

Less than 1%	9
At least 1%, but less than 5%	3
At least 5%, but less than 10%	4
At least 10%, but less than 20%	5
At least 20%, but less than 40%	4
At least 40%, but less than 60%	2
No response	4

The mode was one percent or less, while the median response was at least 5 percent but less than 10 percent. The results show that more than 50 percent of the respondents had less than 10 percent contractor employees in their contracting workforce. Six respondents reported 20 to 60 percent contractor employees in their contracting workforce. Those organizations having contractor employees as a large percent of their total contracting workforce were contracting organizations in Iraq and several smaller DoD agencies in the Washington D.C. area.

6.7 Procurement Functions Considered Inherently Governmental

While the items cited in the background and policy review sections provide some detail on what GAO and OFPP felt were inherently governmental functions, the perspective of the respondents regarding inherently governmental functions was also important. A list of activities that spanned the types of work identified as either inherently governmental, or of a type that could cause concern if performed by a contractor was developed and respondents were allowed to select. Responses are shown in Table I.

Table I
What Procurement Activities Does Your organization Consider
Inherently Governmental? (n = 31)
(Multiple Responses Allowed)

Committing the government to take some course of action	30
Approving evaluation criteria	30
Terminating contracts	30
Approving incentive plans	29
Awarding contracts	29
Obligating funds	29
Voting member of the Source Selection Evaluation Board	28
Ordering changes/taking action based on contractor performance	28
Determining if costs are reasonable, allocable, or allowable	25
Negotiating price, terms, and conditions	24
Accepting or rejecting services or products	24
Determining what supplies or services are to be acquired	23
Use and disposition of government property	23

The 31 respondents for this question are those who indicated their organization was either contracting out procurement functions, or planned to do so in the future. One respondent provided comments but did not answer the question. From their responses it appears all have a common opinion with respect to committing the government to a course of action, approving evaluation criteria, and terminating contracts. The majority of respondents indicated their organizations considered all the listed items to be inherently governmental. Clearly, items that require a contracting officer's signature were considered inherently governmental. The reduced count for some of the items may have been impacted by the organization's mission. Some organizations may not perform certain functions, which could prompt the respondent to not select that response. In addition, based on overall survey results, analysis and staff activities were less clearly inherently governmental and more subject to a contracting out decision.

Many respondents reinforced the fact that contractor employees do not perform any contracting officer responsibilities. One respondent said, "Contracted employees are supporting administration workload; however, [they] do not perform any contracting officer responsibilities." Another respondent stated, "Our contractor employees make a significant contribution in advising the contracting officer regarding reasonable price, terms, and conditions, and in determining what supplies/services should be acquired. Our contractor employees are typically present during negotiations, but the contracting officer makes the decisions." Yet another respondent said, "Activities that require a contracting officer's signature are considered inherently governmental. However, the analysis and staff work to support the contracting officer's signature may be performed by contractor personnel." Each of the respondents understood the duties of a contracting officer, but made somewhat different interpretations as to what procurement functions they considered inherently governmental.

6.8 Sources of Guidance

Given that contracting functions are being contracted out, the sources of guidance would seem relevant. Responses are in Table J.

Table J Where Did You Look for Guidance Regarding Policy/Guidelines on Contracting Out Procurement? (n = 31) (Multiple Responses Allowed)	
Federal Acquisition Regulation, and Supplement	25
Organizational Legal Office	24
Office of Federal Procurement Policy (OFPP)	17
OMB Circular A-76	16
Headquarters Legal Office	8
Other	8

Organizations relied most heavily on the FAR, their specific agency FAR Supplement, and their own legal office. FAR 7.5 provides policy/guidance on inherently governmental functions. Secondarily, they relied on OFPP Policy Letter 92-1 and OMB Circular A-76 for additional guidance. Some organizations cited precedent (specifically in the area of contract closeout) as guidance for their use of contractors, while others looked to their Civilian Personnel Offices for support. Civilian Personnel Offices provide guidance in regard to inherently governmental definitions in support of A-76 studies; therefore, organizations go to them for assistance on similar issues. Still others referred to their Federal Activities Inventory Reform (FAIR) Act inventory for guidance.

6.9 Legal Limits/Concerns

The OFPP, OMB, and FAR all provided guidelines as to functions that should be considered inherently governmental. One of the research goals is to check on the legal bounds for contracting out procurement functions.

Table K Did You Receive Any Legal Limits/Concerns in Your Guidance? (n = 31)	
No	19
Yes	10
No Response	2

As shown in Table K, the majority of respondents answered “no,” but a few specific concerns were brought to the forefront. The first of these was the need for contractor personnel to stay clear of any organizational conflicts of interest. The second was to ensure the contracts do not entail personal services. Many respondents pointed out that contracting out was only done for augmentation purposes. In no way was contracting out intended to displace current federal civil

service employees. Many organizations' FAIR Act submissions identified contracting professionals as criterion "G," which identifies inherently governmental positions. Organizations felt that these positions, though primarily governmental in nature, did include some functions that were not inherently governmental. Those non-inherently governmental functions were those that could be contracted out. It should also be noted the respondents felt that the functions to be contracted out clearly did not include in any way activities the contracting officer must perform such as decisions to obligate the government or terminate contracts.

6.10 Expected Future Involvement

Although no one can foresee the future, respondents with knowledge of contracting out contracting functions should have an understanding that would allow them to knowledgeably forecast future involvement by their organization. Their projections are shown in Table L.

Table L How do You Foresee Your Future Involvement in Contracting Out Procurement Services? (n = 32)	
Increasing	14
Decreasing	6
About the same	10
No Response	2

Of those responding to the question, 47 percent said they would be increasing the contracting out of their procurement services in the future; 20 percent said they would be decreasing contracting out of their procurement services in the future; and 33 percent said they did not expect their level of contracting out to change.

Those organizations foreseeing increasing involvement in contracting out procurement services attributed the anticipated increase in contracting out largely to the result of increasing workload being placed on the organization and limited resources available to meet the workload. Conversely, those organizations foreseeing a decrease in contracting out procurement services attributed those decreases to reductions in short-term surge requirements. Those organizations foreseeing no changes in their contracting out procurement services cited either a limited amount of contracting services that could be contracted out or the workload staying at the same level in the future.

6.11 Positive Experience with Contracting Out

Respondents' comments can be summarized into three areas; positive impact on the mission, flexibility, and high qualifications of contractors. The impact to the mission was the most frequently cited example while flexibility and qualifications were cited less often.

The most frequently cited impact of contracting out procurement was the positive effect on the mission. Many respondents mentioned that contractor personnel can be devoted to a specific task thereby allowing government personnel more time to focus on higher priorities. One response

made it very clear just how much impact contractors have had in their organization by stating, “Our mission would have been significantly degraded without them.” Offices concentrate the contractor personnel on areas that have backlogs or have been neglected due to higher priorities. For example, several respondents mentioned contract closeout as an area where contractor personnel have made great contributions to their organization. They have reduced the backlog due to the fact that they were brought in to work that specific task. On contract closeout, one respondent stated, “The rate of contract closeout has greatly increased—we are in better closeout position now than in the past.”

Many respondents commented that contractors can be brought on to perform specific functions. They noted that hiring contractors involves very few personnel issues. One respondent commented on the “ability to hire specific skill sets for the period of time needed.” They also noted the “ease of replacement and lack of personnel issues involved in contractor hires.” Contributions can be made over a short-term surge, and if the contractor personnel are not performing well they can be quickly removed/replaced. One respondent noted the most positive impact for their organization was the “flexibility in hiring and moving resources.”

Personnel qualifications are an important attribute of hiring contractor support. Many contractors are already trained and can step right in and perform. One respondent noted that the “specific expertise of those contracted for is of high quality”; another noted contractors have “minimal learning curve and limited training time.” Organizations found the qualifications of contractors high due to the fact that many contractor personnel are retired military and civil service employees already trained in the contracting field. One noted, “3 of 5 contractor personnel were already Air Force-trained and could step in and work.” Contractors also bring in fresh ideas based on previous work experience and expertise acquired at other bases or industry. A respondent noted, “It’s a wonderful way to get fresh blood and fresh ideas into the squadron from the outside, for all my hires have previous experience at other bases and in industry.”

6.12 Negative Experience with Contracting Out

The comments from the respondents to this question can be summarized into three general areas; contractor personnel not trained for the specific task, contractor staffing problems (hiring and turnover), and concern that the contracting activity may become too reliant on contractor personnel. The expressed concern with training and staffing was approximately equal and was slightly greater than the concern for becoming too reliant on contractor personnel.

Several respondents expressed disappointment with the qualifications of contractor personnel. For some of the contractor personnel there was a significant learning curve where specific training was required to attain proficiency; one example was that “only three of the five contractor personnel were Air Force-trained or had construction experience.” Another respondent was disappointed in the time it took for contractors to progress down the “learning curve for DoD/Air Force-specific contract procedures/systems.” Still another expressed concern for the ability of contractor personnel to assist in the more complex buys.

The ability of the contractor to recruit and hire qualified personnel was an often mentioned concern, which is closely related to the training problems discussed previously. Since contracting activities often use contractor support to address a surge in workload or until government personnel can be hired, several respondents had experiences where the contractor could not recruit qualified employees; “only four of five positions filled … it has been a challenge for recruitment because of the one-year contract period in attracting personnel for short-term employment”; “recruitment challenge for short term employment”; “our contractor has experienced more difficulty in filling positions than we had originally expected … contractor support personnel are not a panacea for meeting our contract specialist staffing requirement.” This issue is obviously a key determinant of the respondents’ positive or negative feelings about contracting out. If employees with prior government contracting experience can be hired by the contractor, the experience is generally positive, but if they cannot be hired then the customer is disappointed either by an unfilled position or an employee who needs additional training to accomplish the job. One respondent’s comment sums it up well: “It is not reasonable to think that the contractor can hire people off the street as buyers and have them immediately be able to work up to the standards. The contractor has minimized this by seeking out recent retirees … and previous military officers.”

The third concern expressed was that by using contractor support, an activity could become too reliant on contractor personnel. Concern was expressed that the long-term use of contractor personnel could result in a “loss of government expertise in contracted functions.” Another comment indicates that dependency on the contractor is already a short term reality: “The contracting organization has become too reliant on the contractor support personnel as the institutional knowledge for the activity.” It should be noted that this respondent’s organization had many of its government personnel deployed in support of Iraqi Freedom, and contractor support was being used to fill the void. Other less mentioned problems dealt with the difficulty of creating metrics to measure contractor performance and unstable funding availability to obtain contractor support.

In summary, while many respondents did identify the above issues, it is fair to say the enthusiasm for the positive aspects of contracting out procurement functions overshadowed the things that had not gone well.

6.13 Development of Contracting Officers in the Contracted Out Environment

This concern was addressed by the following survey question:

“If the contracting community contracts out a substantial portion of the non-inherently governmental procurement functions, how will future contracting officers be developed to perform the inherently governmental functions?”

This question assumes the contracting community in the future will contract out a substantial portion of the non-inherently governmental functions. It required the survey respondents to apply their understanding of “substantial” and “non-inherently governmental” to determine how future contracting officers will be developed to perform inherently governmental functions. The majority of survey respondents expressed some concern that contracting out a substantial portion of non-

inherently governmental functions would be problematic to developing future contracting officers, but several survey respondents expressed the opposing view.

The comments of those respondents who viewed the issue as problematic can be summarized into three general areas: availability of qualified workforce, training of the workforce, and experience of the workforce.

The largest number of responses concerned the availability of the qualified workforce. Several responses made the point that initially outside hires could effectively fill the contracting officer requirements, but if enough government agencies contracted out, “eventually the number of trained contracting professionals in the pool to hire from would dry up.” Others expressed concern that if we do not develop the next generation of contracting personnel, there won’t be sufficient labor resources and /or leadership to meet the future needs and there will be insufficient resources in both the government and private industry. They stated that “many of the contractor support personnel are retired civil service and military personnel. The fewer retirees, the fewer contractor support personnel available later.” One response indicated that contractor employees provide a good pool of candidates when the government needs to hire permanent employees. Interviews with support contractors echo this theme. Some of their employees who were supporting the government in performing procurement functions were ultimately hired into government positions. But according to those interviewed, it can work both ways as a major source of new contractor employees are prior government employees with procurement experience (military and civilian). Some respondents suggested the contracting community only contract out a reasonable portion of the contracting specialist positions. A reasonable ratio of contractor to government procurement specialists may be appropriate in order to maintain good career progression for future contracting officers.

Responses concerning training of the workforce and experience of the workforce were approximately equal, but less than those addressing availability of the qualified workforce. Several responses stressed the need to provide future contracting officers additional education (business schools), training in leadership, and mentoring. Of particular interest was the emphasis on future contracting officers receiving additional training on being team leaders and managers of contracting organizations having both support contractors and employees. One respondent stated, “They need training on avoiding conflicts of interest and the appearance of personal services in a contracting organization.” Responses also stressed that this training was not a substitute for the experience contracting specialists received from actually doing the processes through on-the-job training provided by experienced contracting mentors. Some respondents felt that all steps of the acquisition cycle from planning to closeout provided some level of knowledge to make the contracting professionals multi-tasked business advisors; therefore, the skills lost in contracting out substantial portions of the non-inherently government procurement functions would be a detriment to the decision-making proficiency of future contracting officers.

Those respondents that indicated that contracting out a substantial portion of the non-inherently governmental procurement functions would not significantly impact the development of future contracting officers mostly took the position that they would only allow contractors to assist/ augment the government in its acquisitions. “We have prepared a statement of work that only

allows contractors to ‘assist’ us with our acquisitions. We are very sensitive to ‘eating our seed corn’ and ‘growing’ future contracting officers.”

In summary, the vast majority of respondents expressed concern that if the contracting community contracts out procurement functions on a large scale, there will be difficulty in having enough qualified contracting specialists to staff the needed requirements for contracting officers. While most viewed the potential problem as a staffing issue, some respondents were concerned with education, training, and mentoring the contracting workforce. Meeting future contracting officer needs if the government contracts out a substantial portion of its non-inherently governmental tasks is predominantly a staffing problem, but the failure to educate, train, and mentor the contracting workforce could exacerbate the problem.

7. Answers to Research Questions

7.1 What is Reasonable to Contract Out?

Per the literature review, interviews, and the survey comments, it is reasonable to contract out in three situations. The first is when faced with a quick-reaction situation where government staffing does not allow performance by government personnel. An example could be a sudden, unpredicted surge in workload. One of the cited advantages of contractor support is the ability to rapidly increase the workforce, assuming qualified personnel are available in the civilian sector. A second situation would be a short-term requirement. The difference between this situation and the first is that this would be predictable. The agency knows the requirement will increase, but also knows it will be short term. It would be logical to bring on contracting support for the short term. The third situation would be a need for specific expertise that is available in the commercial sector, but not available in the government agency.

In these situations it would be reasonable to contract out as many non-inherently governmental functions as necessary to achieve the mission. The contracting officer and chief of contracting should utilize their expertise and subjectivity to achieve a balance among the contractor support and government personnel support for these non-inherently governmental functions. More support should be contracted out for functions that have less impact on the managers’ ability to manage the total contracting function and to develop and consider options. For example, for a major system or subsystem acquisition requiring cost analysis, it would seem that the insight gained from such analysis would likely help the senior agency management consider the options. Thus, the cost and price analysis function might not be the first one considered for contract support. On the other hand, contract closeout, although important, might be deemed to have less impact. Thus, contracting out support for this function would allow qualified government personnel to be shifted to other areas.

7.2 What are Other Federal Agencies Doing?

In conducting the survey the research team sought participation from many federal agencies and the following six responded: Department of State, Department of Transportation, Defense Threat Reduction Agency, Environmental Protection Agency, National Aeronautics and Space Administration, and the Department of Veterans Affairs. Of these six agencies, four responded that

they currently have contractors performing some procurement services. Of the two that weren't using contractors, one cited "contracting was inherently governmental" while the other respondent cited "current resources sufficient and qualified" as their reasons for not contracting out.

The types of procurement functions performed by contractors in the federal agencies were not significantly different than those of DoD activities. For example, "contract closeout" was cited most often, and "negotiating price, terms, and conditions" was cited least often by both DoD and other federal agencies.

The reason most often cited by federal agencies for contracting out procurement services was because it was "more cost effective." This is in stark contrast to the DoD where the least cited reason was "more cost effective." The percent of the current federal procurement workforce that was manned with contractors ranged from 0-24 percent, whereas some DoD activities supporting the war had much higher percentages of contractors. Three of the four federal agencies who are currently contracting out procurement projected the future use of contractors would be increasing, and the other thought their use would remain about the same. The reasons stated for the increased use of contractors were the flexibility and speed offered by contracting out, when compared to the civilian personnel hiring process, to meet short-term requirements.

Generally, federal agencies' experience with contractor support was favorable; however, one agency stated they "... will not be contracting out procurement. In the past (we) were determined to have contracted out too much and are therefore, quite cautious..." But the more positive sentiments expressed "the ability to hire specific skill sets for the period of time needed, ease of replacement, and lack of personnel issues" as what has gone well in their experience. Another comment that they "eliminated job fears" on the part of the government workforce by "clearly, and repeatedly articulating to our civil service workforce that these contractors were for staff augmentation purposes only..." One respondent did indicate their "contractor has experienced more difficulty in filling positions than we had originally expected."

In summary, the federal agency experience with contracting for procurement services is very similar to DoD's experience.

7.3 How Widely are Procurement Functions Contracted Out?

The answer to this question will be addressed from two different perspectives. First, how prevalent is the use of contractors to perform the procurement function (to any degree) in the organizations surveyed? Of the 57 surveys received 26 (or 46 percent) are presently using contractors to some degree to perform procurement functions. Of those respondents from the military services, 33 percent are using contractors compared to 100 percent of the other DoD agencies and 67 percent of the other federal agencies responding. Fifty-two percent of Air Force respondents are using contractors, while the Army and Navy are doing so to a lesser degree: 25 percent and 6 percent respectively.

Secondly, to what extent are the specific contracting functions being performed by contractors? A wide range of responses was received from the respondents. Some only used contractors to

perform administrative-type actions (such as contract closeout) while others involved contractors in more sensitive functions such as negotiating price, terms, and conditions. In general, there were fewer activities that used contractors for the more sensitive functions and more who used them for the more administrative functions. In no instance did any of the respondents state that they used contractors in the role of contracting officer.

In summary, all organizations seem to be using a reasoned approach to the use of contractors in the procurement function. Most seem to prefer to use government personnel if at all possible and use contractors only when mission accomplishment drives them to this decision. In general, contracting agencies are using restraint as to which functions contractors are being allowed to perform. Contractors are used more frequently in the less sensitive functions unless necessity dictates otherwise.

7.4 If we Contract Out Procurement Functions, How do we Grow Contracting Officers?

The specific question in our survey relevant to research question 7.4 above is question 12 (see Appendix B). The respondents to this question were from organizations that are currently contracting out some procurement tasks or had done so in the past. Question 12 assumes the contracting community in the future will contract out a substantial portion of the non-inherently governmental functions. This required the survey respondents to apply their understanding of the terms “substantial” and “non-inherently governmental” in determining how future contracting officers will be developed to perform non-inherently governmental functions. Most of the salient issues relating to this question have been covered in paragraph 6.13 of this report, so only a summary of the issues that relate to research question 7.4 will be included in this section.

The majority of respondents did express concern that contracting out a substantial portion of non-inherently governmental functions would be problematic to growing future contracting officers, but that concern was based predominantly on inadequate staffing. In other words, would there be enough contract specialists in the workforce to obtain the needed numbers of contracting officers? Most of the respondents felt that contracting out non-inherently governmental contracting tasks was not a problem as long as it did not impact the organization’s ability to maintain viable skill/career paths that would be the source of future contracting officers. Several respondents expressed the fact that their organizations have prepared statements of work that only allow contractors to assist/augment contracting with their acquisitions. They were very sensitive to ensuring that there would be enough government contract specialists to fill the contracting officer requirements in the future. Some respondents indicated that increased emphasis on educating, training, and mentoring the contracting workforce would benefit the development of future contracting officers.

7.5 Are We Violating Some Law if we Contract Out Procurement Functions?

The respondents to the survey who indicated their organization was participating in contracting out procurement functions sought various sources to address this particular question. The results of the survey (Table J) indicate the majority of organizations took the legal concern seriously and did seek legal guidance from their organization legal office and in some instances from higher headquarters. Clearly, none of the organizations contracted out procurement functions to displace

current federal civil service employees or as a personal services contract. The primary purpose organizations have contracted out is to augment their capabilities. No organization was contracting out (or intending to contract out) procurement services to the extent where the core procurement capability would be dissolved. The interpretation of what is inherently governmental did vary among our respondents, but all were in agreement that duties of the warranted contracting officer acting as a representative of the government were inherently governmental. In addition, as previously noted earlier in this report, many organizations' FAIR Act submissions identify contracting positions as criterion "G," which applies to positions performing inherently governmental functions. Organizations feel that these positions, though primarily governmental in nature, do perform some tasks that are not inherently governmental; these are the tasks organizations are contracting out.

To summarize this question, organizations could find themselves in violation of law if they contracted out procurement functions that: 1) were by definition inherently governmental, 2) resulted in personal services contracts without congressional approval, 3) dissolved the agencies' core procurement capability, or 4) were inconsistent with the agency's FAIR Act submission. Each organization that intends to contract out procurement functions would be well advised to seek legal counsel and ensure that these four basic points are addressed.

7.6 Have we Gone too far in Some Areas?

From the results of the analysis and interviews, organizations have not gone too far. Organizations that are contracting out procurement functions do so carefully and only contract out the *particular functions* they deem as not inherently governmental. In other words they break out the tasks the procurement function performs and do not place them all under the inherently governmental restriction. These organizations target the non-inherently governmental tasks as possible areas for contractor support to augment their current workforce.

The analysis also indicated some organizations depend heavily on their contracted workforce, and their ability to perform their mission would be severely impacted if they were suddenly unable to contract out. Many organizations that are not currently contracting out stated they would contract out procurement functions if their current resources became inadequate. The crux of the issue seems to be the impact on the mission. It is conceivable that, given sufficient pressure to accomplish the mission and inadequate resources, an organization could be driven to "go too far" if adequate controls are not in place. The bottom line is that the research did not reveal that any organization had crossed the inherently governmental line.

7.7 Where do we Cross the Inherently Governmental Line?

Based upon the survey, there is a lot of variability among the organizations with respect to contracting functions considered to be inherently governmental. Over 25 percent of the respondents related that their organization felt contracting itself to be inherently governmental (Table D), and they did not contract out any procurement functions/activities. On the other hand, over 25 percent of the respondents related that their organizations used contractor support in performing contract closeout, performing price and cost analysis, developing a statement of work, market research, and drafting/developing price negotiation memoranda. It is clear from responses summarized in Table

F that while contractor support is not uniform across procurement functions, it runs the gamut from acquisition planning to closeout.

Is there a clear line to distinguish inherently governmental functions? Based upon the literature and interviews, the inherently governmental line requires management's subjective judgment. Items listed in FAR 7.503 (Policy) as functions that are considered inherently governmental or "which shall be treated as such" clearly establish a "not to exceed" boundary. The judgment as to whether a function should be deemed inherently governmental deals with the public interest, the exercise of discretion, the making of value judgments, the ability to manage the contract, and retention of the government's ability to identify and evaluate alternatives. FAR 7.503(d) lists a number of functions that are not considered inherently governmental, but which "...may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance." Great caution should be exercised when considering contracting out any of these functions, and extra care should be taken in administration of the contract. While this list provides some insight as to risky areas, it does not provide a definitive line.

While the purpose of the OMB Circular A-76 is to establish federal policy for the competition of commercial activities, it provides guidance as to how to make the "inherently governmental" decision. All considered, the best guidance in the Circular is that the inherently governmental decision depends on the ability of the senior agency management to develop and consider options. If performance through contract support is deemed to be inappropriately restricting the senior manager's ability to develop and consider options, then the function should be classified as inherently governmental. While subjective, this guidance provides an actionable decision criterion.

Thus, one crosses the leading edge of the inherently governmental region when one inappropriately restricts senior agency management ability to develop and consider options. The definitive boundary of the region is the proscribed items listed in the FAR 7.503. An analogy might be that of a rocky coastline (the FAR proscriptions), preceded by an underwater reef (the OMB guideline). One can see the rocky shoreline and know it must be avoided, but one must use subjectivity and judgment to avoid the hidden reef. Avoiding the rocky coastline is not sufficient.

8. Conclusions

- a. It is reasonable to contract out non-inherently governmental functions or tasks, when an increased workload suddenly appears; when a requirement for extra workload is only temporary; or when special expertise is required.
- b. DoD agencies and other federal agencies seem to be contracting out procurement functions more widely than the Services, but contracting out similar procurement functions.
- c. Most organizations use contractor support when mission accomplishment drives them to make this decision.

d. Growth of future contracting officers should not be a problem if contracted out procurement support is at a reasonable level.

e. Contracting out procurement functions violates no laws so long as no inherently governmental functions are contracted out, unauthorized personal services contracts are avoided, core procurement capability is retained, and consistency is maintained with FAIR Act submissions.

f. Many organizations' ability to perform their mission would be severely impacted if they were suddenly unable to contract out.

g. The reservation some units have with contracting out procurement functions seems to weaken when faced with an understaffed condition.

9. Recommendations

The first impulse is to recommend that various procurement functions or tasks be identified and classified as those that are appropriate for a contractor to perform and those that are inappropriate. This would be difficult in that there could be much disagreement whether specific tasks are appropriate for a contractor to perform based on an individual's experience and willingness to accept risk. The current definition of inherently governmental and the examples provided in the OMB Circular A-76 and the FAR, are well constructed and provide appropriate guidance while allowing the application of the business judgment that is necessary to accomplish the mission in today's changing environment. While there appears to be universal agreement that the contracting officer (CO) role cannot be contracted out, there is disagreement as to the use of contractors to do the tasks leading to a CO's decision.

For example, the CO must make a fair and reasonable determination. A contractor could conduct the price/cost analysis and/or negotiate the final terms and conditions and make a recommendation to the government CO who then signs the contract. The CO made the final decision by signing the contract, but to what extent did the CO rely on the contractor's recommendations? Did the CO take the recommendation at face value or did the CO conduct a thorough review of the documentation before signing the contract? Obviously this depends on the CO and his or her own personal management approach as well as his or her level of trust in the negotiator who made the recommendation. But this is no different than would be the case in a situation with a government negotiator.

While the survey results reflected that contractors are primarily used to accomplish the more administrative tasks, a few of the respondents used contractors to accomplish some of the more sensitive procurement tasks such as negotiation of price, terms, and conditions, but where the CO still made the final decision. In this type of arrangement, there would need to be substantial discussion between the CO and the contractor typical of the discussion that occurs between the CO and the government buyer. In essence, an atmosphere bordering closely on personal services could be created. If one believes negotiating price, terms, and conditions is inappropriate for contractors to perform, one could issue guidance precluding such, but interpretation and enforcement of this

type of policy is always problematic in its implementation. Instead of a restrictive list of dos and don'ts of contracting out procurement functions, a better approach is available.

Recommend that each contracting activity be limited in the percentage of their workforce that may be contracted out. The appropriate limitation can certainly be debated, but the research team recommends that contractor employees should not exceed 25 percent of an activity's total 1102 workforce in other than exceptional situations. This approach achieves several objectives.

First, it provides each activity the flexibility to use contractors to accomplish the mission by quickly reacting to surge workload situations within its organization's funding constraints. Most respondents stated they preferred the use of a government workforce to accomplish the procurement function and only used contractors when necessary to meet the mission. While recognizing this preference, the respondents also found it necessary at times to use contractors to meet the mission. In fact, the findings indicate that many of the respondents who were not currently contracting out any of their procurement functions and stated their reason to be because "procurement is inherently governmental" might feel otherwise if they were confronted with a surge requirement that exceeded their capability to perform and resulted in a negative mission impact. So allowing the procurement activities some authority to contract out when necessary seems prudent.

Secondly, this approach addresses another concern when contracting out the procurement workforce. By limiting contractors to 25 percent of the total procurement workforce, a manager would typically assign the contractors to the lower priority (and less sensitive) tasks. This is logical because these tasks would be the ones that could not be accomplished by the government workforce and which led to the decision to use the authority to contract out. By limiting the total contractor workforce to 25 percent, the assumption is that they would be less involved in the more sensitive procurement tasks. Obviously there could be exceptions, but management would make these decisions only when appropriate. For instance, a contractor employee who has extensive government contracting experience could be used to negotiate price, terms, and conditions because they were highly qualified and trusted by the CO.

Finally, this policy would also help address the concern of growing future COs. Some have expressed concern that extensive contracting out would have the long-term effect of reducing the opportunity to develop adequate government personnel who have the full range of contracting experience necessary to meet the CO needs of the future. A 25 percent limit on the contractor workforce should provide management the opportunity to develop prospective COs in all aspects of procurement.

While the recommendation is to limit the contractor workforce to some reasonable percentage, the need to allow flexibility for short-term exceptions is recognized. Certainly the present commitment in the Middle-East has resulted in the need to utilize a larger percentage of contractors in some deployed procurement activities to ensure mission accomplishment. It is also recommended that a process be established for situations when it becomes necessary to exceed the suggested contractor percentage limits. The process should not be overly onerous, but should have an approval level outside the contracting activity with a specific time limit for the waiver. These short-term situations should be accommodated and should not have a negative impact if well managed. The CO function

can still remain governmental, and a short-term situation should not impact the development of future COs.

10. Suggestions for Follow-on Research

In the course of performing this research, related follow-on research issues became apparent. The first such issue is personal services contracts. Personal services have always been problematic, but they have become more so since the government is relying on advisory and assistance contracts to a greater extent to accomplish its mission. This is true throughout the different acquisition disciplines. In many cases, the advisory and assistance contracts have been in place for years, and it is very hard for one to distinguish between government and contractor personnel. An area for further research would be to study the relationship between government and contractor personnel to determine if a personal services contract environment exists. Are we creating personal services contracts without getting the proper approval? Are unintended personal services contracts being created in an environment where the mission is severely impacted by deployments and lack of qualified personnel?

The second area for follow-on research is the consolidation of services as the result of an A-76 competitive sourcing study. For example, on a base where the Civil Engineering (CE)/Facility Engineering (FE) function (a major customer for an operational contracting organization) has been competitively sourced to a contractor or to the government most efficient organization (MEO), the consequence may be the outsourcing of the procurement function related to CE/FE. In these cases, the performance work statement often requires the winning party to provide all the materials and services necessary to perform the CE/FE function. The major focus of operational contracting then shifts to an administrative role of providing government surveillance of either the commercial contractor or the MEO. What has been the impact on operational contracting in these instances? If such actions continue, what will be the long-term impact on the contracting workforce?

REFERENCES

Air Force Materiel Command (AFMC) (1997), Outsourcing of Contracting Functions, HQ AFMC/PK FY97 Strategic Action Item #22, Presentation Charts, March 14.

Army Materiel Command (AMC) (1998), “Contracting XXI Blueprint,” May 1.

Cannaday, John Lieutenant Colonel, USAF (2004), “Contracted Procurement Services: Is It Time for Contracting to Get on the Bandwagon?” Air War College research report, April.

“Commercial Support Program Manual (CSPM)” (Online) (2005), Australia Department of Defence. Available: <http://www.defence.gov.au/cto/csp>.

Defense Acquisition University (DAU) (2005), Shaping Smart Business Arrangements, CON 100 Student Guide, Version 7, January 1.

Defense Federal Acquisition Regulation Supplement (DFARS) (2005) (Online). Available: <http://farsite.hill.af.mil/reghtml/regs/far2afmcars/fardfars/dfars>.

Defense Logistics Agency (DLA) (2005), “J-3312 Staffing Model and Workload Assessment Update,” Briefing Charts, February 15.

Department of Defense (DoD) (2004), Inventory Report of Inherently Governmental and Commercial Activities, August.

Federal Acquisition Regulation (FAR) (2005).

General Accounting Office (GAO) (1981), “Civil Servants and Contract Employees: Who Should do What for the Federal Government,” Comptroller General’s Report, FPCD-81-43, June 19.

GAO (1991), “Government Contractors: Are Service Contractors Performing Inherently Governmental Functions?” GGD 92-11, November.

Gosier, Chris (2005), “Stretched staffs turn to contractors for support”, *Federal Times*, July 11.

Guide to Inventory Submission (1999), DoD Inventory of Commercial and Inherently Governmental Activities, October.

Harman, Beryl Dr. (2004), Meeting with Mr. Charlie Williams (SAF/AQC), May 13.

Kelman, Steve (2004), “Procurement — a quiet crisis,” *Federal Computer Week* (Online). Available: <http://www.fcw.com>, November 4.

McMillan, James H. and Sally Schumacher (1989), *Research in Education* (Second Edition), Harper Collins.

Office of Federal Procurement Policy (OFPP) (1992), Policy Letter 92-1, September 23.

Office of Management and Budget (2003), OMB Circular A-76, May 29.

Philo, Tom (2004). Corporate and Government Contracting Out (Online). Available: <http://www.taphilo.com>.

Rogers, Linwood (2000), “Comprehensive Acquisition Support Services Solicitation—Inherently Governmental Functions, Core Logistics Capability, and FAIR Act Submissions, Memorandum of Law, DSCR-G, June 28.

Schooner, Steven L (2005), “Contractor Atrocities at Abu Ghraib: Compromised Accountability in a Streamlined, Outsourced Government,” The George Washington University Law School Working Paper No. 109, Accepted for Stanford Law and Policy Review, Vol 16:2, expected 2005.

Trochim, William M. K. (2001), *The Research Methods Knowledge Base*, Atomic Dog Publishing, Cincinnati, OH.

APPENDIX A: TYPICAL E-MAIL REQUEST FOR SUPPORT

Ms. XXXXXXXX,

On behalf of Mr. Charlie Williams, Deputy Assistant Secretary of the Air Force (Contracting), Defense Acquisition University (DAU) is conducting a survey concerning “contracting out procurement.” Mr. Williams is interested in the following aspects of this subject:

- What is reasonable to contract out in the procurement arena?
- What are other federal agencies doing and what can we learn from them?
- How widely is procurement being contracted out?
- If we contract out contracting activities, how do we grow our contracting officers?
- Are we violating some law if we contract out procurement?
- Have we gone too far in some areas of contracting out procurement?
- Inherently governmental, when do we cross the line?

The attached survey seeks to gather information in a consistent and usable way to help us address his interests. The focus is not on the impact of contracting out the entire contracting function, but looking at specific duties within the 1102 specialty. Your input is valuable to the Air Force as it broadens our perspective of what is being done in all of the Federal Government. Please send this survey to those who are knowledgeable of what is being done in their respective organizations related to contracting out procurement. Each organization’s input is important whether they are contracting out procurement duties or not. Please have your contracting organizations complete the attached survey and other information that would be of value; save it to a disk or your hard drive; and insert it in a return e-mail to my address below by May 6, 2005. If you have questions, contact me by telephone at (937)-781-XXXX or e-mail at first.lastname@dau.mil. Thanks for your support.

XXXXXXX

XXXXXXXXXXXXXXXX
Professor of Contracting
DAU Midwest

(937) 781-XXXX
xxxxxxxxxxxx@dau.mil

APPENDIX B: SURVEY INSTRUMENT

CONTRACTING OUT THE PROCUREMENT FUNCTION

(This survey is a form; use cursor or tab button to move through the document)

SURVEY

November 8, 2004

The term “contracted procurement services” is defined as the use of private sector contractors to carry out actions associated with obtaining supplies or services (including construction), from initial description through solicitation and contract award and all phases of contract administration for the U.S. Government—i.e., hiring contractors to do contracting. This survey specifically applies to the contracting out of duties performed by the 1102 job series/and equivalent military occupational codes and is not associated with support roles—i.e., administrative or statistical support.

1. Information

Name of organization _____

Name of POC _____

Telephone number POC _____

E-mail of POC _____

2. Does your organization currently have contractors performing contracting procurement services as defined above? (Please place “x” in only one space.)

A1. No

A2. No, not currently, but we have in the past

A3. No, not currently, but we plan to do so in the future

A4. Yes

If your answer to question #2 above is A1, please answer question # 3. This will complete your survey

If your answer to question #2 above is A2, after completing question #3 skip to question # 9

If your answer to question #2 above is A3 or A4 proceed to question 4

3. If your answer to question #2 was A1 or A2, what are the major reasons you are not contracting out procurement services? (**Please check all that apply.**)

- A1. Contracting is an inherently governmental function
- A2. It is not cost efficient
- A3. Unsatisfactory contractor performance
- A4. Current resources sufficient and qualified
- A5. Concern with handling proprietary information
- A6. Could negatively impact competition
- A7. Other (**Please explain in the space provided below. Box will expand to 2,000 characters.**)

4. What procurement services are you or will you be contracting out? (**Please check all that apply.**)

- A1. Procurement planning (i.e., preliminary market research, requirements identification, PR review, validation of funding)
- A2. Market research
- A3. Providing assistance in developing a statement of work
- A4. Recommending procurement strategy (i.e., contract type)
- A5. Drafting solicitation document
- A6. Issuing solicitation package
- A7. Receiving, assessing offers and preparing package for negotiation
- A8. Performing price/cost analysis
- A9. Drafting/developing price negotiation memorandum (PNM)
- A10. Negotiating price, terms, and conditions
- A11. Processing award decision and distributing contract
- A12. Reviewing performance and advising the exercise of options
- A13. Investigating reports of discrepancy
- A14. Identifying orders for expedited delivery
- A15. Negotiating contract modifications
- A16. Preparing contracts for closeout
- A17. Other (**Please explain in the space provided below. Box will expand to 2000 characters.**)

5. What are the major reasons you are contracting out procurement services?

(Please check all that apply.)

- A1. Inability to hire adequate resources to meet workload
- A2. To meet workload surge requirements
- A3. More cost effective
- A4. Contracting out is faster than hiring to meet workload
- A5. Ability to select specific expertise required
- A6. Bridge to hiring permanent employees
- A7. Other **(Please explain in the space provided below. Box will expand to 2,000 characters.)**

6. What percent of your current procurement workforce (1102s) consists of contractor employees? **(Contractor full time equivalents (FTEs)/Govt Personnel + Contractor FTEs)**

7. What procurement activities does your organization consider inherently governmental? **(Please check all that apply.)**

- A1. Determining what supplies or services are to be acquired
- A2. Approving evaluation criteria
- A3. Approving incentive plans
- A4. Committing the government to take some course of action
- A5. Negotiating price, terms, and conditions
- A6. Awarding contracts
- A7. Obligating funds
- A8. Terminating contracts
- A9. Determining if costs are reasonable, allocable, or allowable
- A10. Voting member of the Source Selection Evaluation Board
- A11. Accepting or rejecting services or products
- A12. Ordering changes or taking action based on contractor performance
- A13. Use and disposition of Government property
- A14. Other **(Please explain in the space provided below. Box will expand to 2,000 characters.)**

8. a. Where did you look for guidance regarding policy/guidelines on contracting out procurement? (**Please check all that apply.**)

A1. Federal Acquisition Regulation and supplement
A2. Organization legal office
A3. Headquarters legal office
A4. OMB A-76 Circular
A5. Office of Federal Procurement Policy
A6. Other (**Please explain in the space provided below. Box will expand to 2,000 characters.**)

b. Did you receive any legal limits/concerns in your guidance?

A1. No
A2. Yes (**If yes, please explain the legal concern(s) in the space provided below. Box will expand to 2,000 characters.**)

9. How do you foresee your future involvement in contracting out procurement services? (**Please check only one space.**)

A1. Increasing
A2. Decreasing
A3. About the same

(**Please explain your rationale for the selection above in the space provided below. Box will expand to 2,000 characters.**)

10. What has gone well in your experience with contracting out procurement services? (**Please explain in the space provided below. Box will expand to 2,000 characters.**)

11. What has **not** gone well in your experience with contracting out procurement services? (**Please explain in the space provided below. Box will expand to 2,000 characters.**)

12. If the contracting community contracts out a substantial portion of the non-inherently governmental procurement functions, how will future contracting officers be developed to perform the inherently governmental functions?
(Please explain in the space provided below. Box will expand to 2,000 characters.)

13. Thank you for your participation and comments. If you have other comments/lessons learned for the benefit of our research study, please include them in the space below. **(Box will expand to 2,000 characters.)**

Check here if you would like a copy of the research report.

